

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ARACELI ROQUE,

Plaintiff,

v.

TIO CARLOS RESTAURANT,

Defendant.

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Civil Action No. 3:20-CV-3590-X

MEMORANDUM OPINION AND ORDER

Under Federal Rule of Civil Procedure 41(b), the Court **DISMISSES WITHOUT PREJUDICE** Plaintiff Roque’s case against Defendant Tio Carlos Restaurant for failure to prosecute her case.

The Court twice ordered the parties to mediate their case. [Docs. 23, 36]. Both times, the parties failed to comply. Most recently, Defendant alerted the Court that that failure was in part because “Plaintiff’s counsel could not contact the Plaintiff.”¹ Accordingly, the Court ordered Plaintiff to “explain[] why this case should not be dismissed for want of prosecution and failure to obey Court orders” by “June 23, 2023 at 5:00 PM.”² Once again, Plaintiff ignored the Court’s order.

Rule 41(b) allows the Court to “dismiss the action” if “the plaintiff fails to prosecute or to comply with these rules or a court order.”³ Dismissal under Rule 41(b) may be *sua sponte*, but it may be with prejudice “only if the failure to comply with the

¹ Doc. 40 (cleaned up).

² Doc. 40.

³ FED. R. CIV. PROC. 41(b).

court order was the result of purposeful delay or contumaciousness and the record reflects that the district court employed lesser sanctions before dismissing the action.”⁴

The Court, in its discretion, notes that, despite Roque and her lawyer’s failures, the record lacks the findings of purposeful delay or contumaciousness, and the Court has not already imposed the lesser sanctions necessary to warrant dismissal with prejudice—the heightened standard for dismissal with prejudice that Rule 41(b) requires. Therefore, under Federal Rule of Civil Procedure 41(b), the Court **DISMISSES WITHOUT PREJUDICE** Roque’s case against Defendant for Roque’s failure to prosecute her case and Roque and her lawyer’s failure to comply with the Court’s orders.

IT IS SO ORDERED this 27th day of June, 2023.



BRANTLEY STARR
UNITED STATES DISTRICT JUDGE

⁴ *Long v. Simmons*, 77 F.3d 878, 879–80 (5th Cir. 1996).